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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,490	11/26/2003	Dawn Sikorski	325904US0	9538
22850 7590 09/28/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
09/28/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/723,490

Applicant(s)

SIKORSKI, DAWN

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-54 and 56-58 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 46-54, 56-58 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

The 112 second paragraph rejection of claims 15 and 57 is hereby withdrawn due to the amendment filed 6/8/09.

Claims 46-54, 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto et al (EP 0990391A1) in view of Gimelli et al (6596336), Daniels et al (6447831) and Widlak (6387433), Haynes et al (6352733) and Tsen et al (3919434).

Goto et al disclose an oil and fat composition comprising 1,3 diacylglycerol oil in amount of 15-95%. The fatty acids comprised by the diacylglycerol include 55% or more of unsaturated fatty acids. The oil and fat composition is used in products such as cakes, cookies , pies, breads etc... The amount of oil and fat of the food product is in the range of 3-95%. Food materials such as emulsifiers, lecithin, gum, colorant etc... can be added. (see page 2 lines 40-58, page 4 lines 20-58 and the examples.)

Goto et al do not disclose substitute for all of the triacylglycerol oil and fat, ingredients as in claim 47, the emulsifier is sodium stearyl lactylate and protein content in the flour..

Gimelli et al disclose a sauce emulsion; they teach to use sodium stearyl lactylate as the emulsifier (see col. 3 lines 53-66)

Daniels et al disclose a fat composition for use as spreadable product or as frying medium; they teach to use sodium stearyl lactylate as emulsifier (see col. 4 lines 1-5).

Widlak discloses a fluid emulsified shortening composition. Widlak teaches to use salts of stearyl lactylate as one of the emulsifiers. The emulsifiers give softer crumb texture in the bread product. (see col. 3 lines 52-65)

Haynes et al disclose cookies; they teach to add sodium stearoyl lactylate as emulsifier in the cookie dough (see col. 26 lines 18-20, 62-64)

Tsen et al teach method of making cookies with reduce amount of fat. They teach to add sodium stearoyl lactylate to increase the spread ratios of the cookies, to permit lower use of fat and also to improve the cookies' quality. (see col. 7 lines 53-57, col. 8 lines 3-8)

It would have been obvious to one skilled in the art to replace all of the triacylglycerol when desiring a healthier product; this would have been an obvious matter of preference. Goto et al disclose to use emulsifier in the fat composition and do not limit the emulsifier to a specific one. It would have been obvious to one skill in the art to use sodium steroyl lactylate because it is a well known emulsifier that is used in many types of products such as emulsion, shortening composition and fat composition as exemplified in the prior art to Gimelli et al, Daniels et al and Widlak. The Goto et al product is a fat composition; thus, one would have been motivated to use sodium steroyl lactylate because it is shown by Daniels et al and Widlak that such emulsifier is used in fat composition. Goto et al also teach to use the fat composition in cookie product; thus, it would have been obvious to one skilled in the art to use sodium stearoyl lactylate as the emulsifier because such emulsifier is known to be used in cookie as shown by Tsen et al and Haynes et al. Also, Tsen et al show that sodium stearoyl lactylate improves the cookies' quality. As to the improved crumb softness and emulsion stability, emulsifier by definition ,as shown in Widlak, is a substance that promotes the formation and improves the stability of emulsion (see col. 4 lines 53-55). Widlak also

teaches emulsifier such as stearyl lactylate produces bread which has a softer crumb texture. Thus, the property of improved emulsion stability and crumb softness will be inherent in the Goto et al product when stearyl lactylate is added. With regard to claim 57, it is not clear if the dough or the flour has the protein content claimed. It is known in the art that the protein content of flour varies. For example, soft flour has a lower protein content than hard wheat flour, it would have been obvious to use flour with any varying protein content depending on the protein content wanted.

The new references are added due to the amendment to the claims.

In the response filed 6/8/09, applicant comments on the unexpected result of using sodium stearyl lactylate. New references are added to show that sodium stearyl lactylate is a very commonly used emulsifier in cookies. The selection of sodium stearyl lactylate would have been obvious to one skilled in the art because Goto et al teach to add emulsifier to the composition without placing restriction. Sodium stearyl lactylate is a well known emulsifier that are used in fat composition as well as baked product such as cookies. It is not necessary to show in the rejection that the selection of a particular additive is for the same purpose as claimed. It is only required to show how such selection would have been obvious to one skilled in the art. In the instant case, the selection of sodium stearyl lactylate as emulsifier would have been readily apparent to one skilled in the art in view of the teaching of the prior art. Applicant argues Gimelli et al , Daniels et al and Widlak do not disclose cookie. The secondary references demonstrate that sodium stearyl lactylate is a commonly used emulsifier that is added to many type of product. Thus, the generic teaching of an

emulsifier in Goto et al would lead one skilled in the art to any commonly used emulsifier and sodium stearoyl lactylate is one. The new references show that sodium stearoyl lactylate is also commonly used in cookie and it has the benefit of improving the cookies' quality. Thus, one would be motivated to use sodium stearoyl lactylate in the fat composition when the composition is used in cookie product. The property of improved emulsion stability and crumb softness is inherent in the Goto et al composition when sodium stearoyl lactylate is used. A recognition of an inherent benefit is not a basis for patentability.

Applicant's arguments filed 6/8/09 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 23, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794